1947.

File No. O. Finance 47.

Legal DEPARTMENT

A. BRANCH

Subject:—

Opinions under the Bombay Finance Act 1932.

P 3 E

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447

485-A.

CONTENTS.

Legal Department File No. C. Finance 2 / 1947.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Finance Act, 1932.	
1.	C.No. 11487 22/11/1947.	Section 12. Letting of premises- interpretation of the term "business."	1-2.
2.	C.No. 11556 5/13/1947.	The Indian Partnership Act, 1932. Section 25. Recovery of electricity duty from a dissolved firm.	3-4.

DVV
8/5/56.
5 C.

Office of the R. L. A.

Letting of premises - whether business - Bombay Finance Act, 1939.

The second proviso to section 83 of the Bombay Finance Act, 1939 provides that where more than one building or land in the same locality is used for the purpose of one and the same business, the urban immovable property tax will be assessed on the annual letting value of all such buildings or lands. It is apparent from this provision that what is essential is that buildings or lands must be used for the purpose of one and the same business In Mahaladan Barati Bazaar Co., 56 Indian Cases, page 914 it was held:

> "A man who has invested his capital in house property and who keeps a rent office and a staff of rent collectors, clerks etc. for the purpose of letting out his houses and collecting rents is not carrying on a business. He is merely taking the ordinary steps necessary for enjoying the income from his property. If he bought and sold house property continually, he will then no doubt be carrying on a business. He would be trading in house property but not if he only bought a house or sold one from time to time as incidental to his position as owner of house property. The method of ax acquiring gain is passive by owning property and x not by active carrying on of a business."

It follows from this decision that a person who owns certain property and lets it out for rent is not deemed to be carrying on a business. If such a person is not considered to be carrying on a business, much less could the property let out be said to have been used for the business of letting out. Where buildings more than one are rented out by the same x persons they cannot be said to be used for the purpose of one and the same business.

Sd/- R.M.L.

Remembrancer of Legal Affairs.

U. R. to R. D. No. 11437 Dated 29th November, 1947

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Bombay Finance Act, 1932. Recovery of Electricity Duty from a dissolved firm.

There is no substance in any of the contentions raised by Mr. Pandya.

Notwithstanding the dissolution of the firm and the death of one of the partners, Mr. Pandya is jointly and severally liable to pay the duty to Government (see section 35 of the Indian Partnership Act, 1932). Consequently ~~xk~~ it would be competent for Government to recover the duty through Court or as an arrear of land revenue from Mr. Pandya and out of the assets of the deceased partner in the hands of his legal representatives. The present licensee to whom the undertaking seems to have been transferred would not be liable to pay the duty since it is not a liability attached to the undertaking.

Sd/- P.M.L.
1/12.

Remembrancer of Legal Affairs.

U. R. to R. D. No. 11866, dated the 3rd December, 1947.

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